No. 219

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. [redacted]

EVELYN EDWARDS,

Petitioner,

against

DOCTORS HOSPITAL, INC., SEYMOUR WIMPFHEIMER, IRVING SOMACH and WILLIAM MURPHY,

Respondents.

BRIEF OF RESPONDENT, DOCTORS HOSPITAL, INC., IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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BRIEF OF RESPONDENT, DOCTORS HOSPITAL, INC., IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Questions Presented

1. Whether the notation of the Judge's decision in the civil docket constitutes the entry of the judgment and fixes the date from which the time within which an appeal may be taken is computed.

2. Whether the District Judge, after the expiration of sixty days from the date of the docket entry, has any power to grant an extension of time to appeal.

Statement

Plaintiff sued several defendants to recover damages for personal injuries. Her case was tried before Judge Byers and a jury in the Eastern District Court of New York. At the close of the case the defendants' motions for directed verdicts were granted. A notation of the judge's decision was made by the clerk in the civil docket on the same day.

The decision and the notation in the docket were made on March 26, 1956. On April 10, 1956, costs were taxed and a formal judgment was signed by Judge Byers. On May 29, 1956, the plaintiff moved by order to show cause for an extension of time to file her notice of appeal. The motion was granted by Judge Inch on June 1, 1956, and the notice of appeal was filed on June 8, 1956.

The defendants moved to dismiss the appeal on the ground that it was not timely taken. The motion was granted in an opinion reported at 242 F. 2d 888. The plaintiff now seeks a writ of certiorari to review the order of dismissal, her contention being that the time within which she might take her appeal should have been computed from the date of the entry of the formal judgment, not from the date on which the judge decided the case and the notation of his decision was made in the civil docket.

Argument

1. THE DIRECTION OF A VERDICT IN FAVOR OF THE DEFENDANTS BY THE TRIAL JUDGE WAS A FINAL DETERMINATION OF THE ISSUES IN THE ACTION. THAT DETERMINATION CONSTITUTED THE JUDGMENT IN THE ACTION. THE NOTATION OF THE COURT'S DECISION IN THE CIVIL DOCKET CONSTITUTED THE ENTRY OF THAT JUDGMENT, AND THE PLAINTIFF'S TIME TO APPEAL MUST BE COMPUTED FROM THAT DATE.

There is no room for dispute that the trial judge, in directing a verdict for the defendants, finally disposed of

the issues before him. He decided that the plaintiff was not entitled to any relief and his decision contemplated no further action on his part to make the determination final. That decision constituted the judgment in the case and it was entered when the clerk noted it in the civil docket.

The direction of a verdict in favor of a defendant in a personal injury action is obviously the concluding judicial act of the court disposing of the matter. "A final judgment is the concluding judicial act or pronouncement of the court disposing of the matter before it. But neither by statute nor by rule is there a requirement that judgment be pronounced in any particular way, or embodied in written form in a separate formal document entitled 'judgment'." (*In re Forstner Chain Corp.*, 177 F. 2d 572, 576.)

The Federal Rules of Civil Procedure provide in clear terms that appeals lie from final decisions only, the word "decision" being synonomous with the word "judgment". (Rule 54(a).) The time within which an appeal may be taken is thirty days after the date of entry of the judgment, and the date of the entry of the judgment is fixed by the date on which the Clerk of the Court makes a notation of the decision on the civil docket. (Rule 58, and Rule 73(a).) There are no conflicting views among the judges of the several Circuits as to the meaning of the rules; such conflicting views as do exist arise from the difficulty of determining when the final decision was rendered. That is a problem which may arise in any particular case and is one of interpretation of the decision handed down by the judge and of the notation made in the docket by the clerk. It is scarcely a problem which justifies review by the United States Supreme Court.

The rule of interpretation adopted by the judges of the Court of Appeals for the Second Circuit seems entirely reasonable. It is stated in the opinion in *F. & M. Schaefer Brewing Co.* v. *United States*, 236 F. 2d 889, 891:

> "As we have held, these rules contemplate some decisive and complete act of adjudication by the district judge; when this is done, and notation thereof made in the civil docket, the judgment is complete without other formal documents which, if filed, are ineffective to delay the judgment or extend the time of appeal."

That was the procedure followed in the instant case. The opinion states:

> "The determination made by Judge Byers on March 26, 1956, followed by the docket entry, decided the case with finality. There was no occasion for him separately to pass upon the motions by defendants to dismiss the complaint as the dismissal followed as a matter of law upon the direction of a verdict in favor of the defendants." (*Edwards* v. *Doctors Hospital*, 242 F. 2d 888, 890.)

That the Court of Appeals draws a clear distinction between a decision which is a decisive and complete adjudication of issues and one which contemplates further judicial action is clearly illustrated by the opinions in the other two motions for the same relief which were decided with the instant motion, and which were denied. (*Bertha Building Corp.* v. *National Theatres Corp.*, 242 F. 2d 891, and *Haber Baking Co.* v. *Strochmann Bros. Co.*, 242 F. 2d 891.) The test is whether the decision is final, and the date from which the time to appeal is to be computed is the date on which final adjudication was made and noted in the clerk's civil docket, not the date on which a formal document was filed embodying the final adjudication.

This does not conflict with the opinion of this Court in *United States* v. *Hark*, 320 U. S. 531, which was a criminal case, and one in which the Court said that it did not have "the benefit of a rule such as Rule 58 of the Federal Rules of Civil Procedure which provides that 'the notation of a judgment in the civil docket as provided by Rule 79 (a) constitutes the entry of the judgment; and the judgment is not effective before such entry'."

2. THE DISTRICT COURT WAS WITHOUT JURISDICTION TO GRANT THE PLAINTIFF AN EXTENSION OF TIME WITHIN WHICH TO FILE HER APPEAL MORE THAN SIXTY DAYS AFTER JUDGMENT WAS ENTERED. THE ORDER WAS THEREFORE A NULLITY.

The plaintiff's time to appeal expired on April 25, 1956, and her time within which to apply for an extension of time expired on May 25, 1956. The motion for the extension of time was not made until May 29, 1956. By then the court had no jurisdiction over the case and no power to grant a further extension of time. Its order was therefore a nullity. (*Marten* v. *Hess*, 176 F. 2d 834; *Howard* v. *Local 74*, 208 F. 2d 930; Rule 73 (a).)

3. NO SPECIAL OR IMPORTANT REASONS EXIST HERE FOR GRANTING A WRIT OF CERTIORARI, OR WHICH CALL FOR THE EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

The only significant question raised by this record is whether the Circuit Court of Appeals for the Second Circuit was correct in interpreting the trial judge's decision as being the final judgment in the case, requiring no further judicial act for its completion. For the rules are clear that, if it was such a final decision, the time to appeal from it began to run from the date on which the clerk noted it in the civil docket. This is a particular problem in a particular case, involving no issue of any importance to litigants other than the parties to this action. The plaintiff does not contend, or even suggest, that, where a formal judgment is entered embodying a final decision of a district court, the time within which to appeal runs from the date of entry of the formal judgment, not from the date of entry of the final decision. Such a contention would not seem to be sustainable, but it would present the only question of general interest and importance in connection with this case.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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